IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b))

Description of Case

W.P. No. 594 of (M/S) 2003, decided on 11.07.2003

Narendra Singh & others ---------- Petitioner

Versus

Addl. S.D.M. and others ------ Respondents

A.F.R. (Approved for reporting)
~~Not approved for repo~~rting

Date 11-07-2003 Initials of Judge

Note – Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

COURT NO.6

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITIO NO.594 OF 2003 (M/S)

CIVIL SIDE

Narendra Singh & others …… PETITIONER

Versus

Addl. S.D.M. and others ……. RESPONDENTS

Hon'ble Rajesh Tandon J.

Heard Sri Ram Ji Srivastava for the petitioner and Sri N.C. Gupta, Standing Counsel for the State.

This writ petition under Article 227 of Constitution of India has been filed by the petitioner challenging the judgment and order dated 3.6.2003 passed by the Additional S.D.M. Dehradun, respondent no.1.

The brief facts giving rise to this writ petition are that proceedings under section 145 of Cr.P.C. was initiated by S.D.M. Dehradun in respect of Khasara No. 691 and 692 situated at village Kurkawala, Pargana Parvadun, District Dehradun and Khasara plot no. 955 situated in village Madhowala, Pargana Parvadoon, District Dehradun. The Station Officer, Police Station Doewala, Dehradun submitted his report before the S.D.M. on 16.01.1997 on the basis of which preliminary order was passed by S.D.M. and thereafter on 29.1.1997 property in dispute was attached under section 146 Cr.P.C. On 4.2.1997 the said property was given in the superdagi of one Jamil Ahamad.

It appears that the petitioner objected to the said proceedings under section 145 Cr.P.C. on the ground that civil suit between the parties is pending before the Civil Judge (Junior Division) Dehradun

and, therefore, proceedings initiated under section 145 Cr.P.C. is not maintainable.

On 23.3.1998 proceedings under section 145 Cr.P.C. were dropped. Preliminary order dated 29.1.1997 was also withdrawn. Aggrieved by the order dated 23.3.1998 a criminal revision was preferred by the respondent no.2 and 3 namely Ashok Kumar and Vikaram Singh. On 30.6.200 criminal revision no.42 of 1998 was also dismissed.

It is evident that suit No.300 of 1996 has been filed by Nagendra Singh and Nitin Singh, as would appear from the copy of the plaint annexed along with writ petition. The present respondent Ashok Kumar and Vikaram Singh have already appeared in the said suit. The learned Civil Judge on 2.4.1998 has passed injunction order which is annexure-6 to the writ petition. Aggrieved by the judgment dated 2.4.1998, an appeal has been preferred and the same is still pending before the appellate court.

It has been stated by the counsel for the petitioner that civil suit is still pending between the parties and the question of title has to be decided by the civil court. However, in the mean time application has been filed by Ashok Kumar for releasing the property in dispute in his favour. On 3.6.2003 Additional S.D.M. Dehradun has passed the order releasing the property. The petitioners have challenged the order dated 3.6.03 by way of present writ petition under Article 227 of Constitution of India.

Since the proceedings under section 145 was initiated under the provisions of Cr.P.C. and the impugned order has been passed releasing the property after dropping the proceedings under section 145 Cr.P.C., therefore, the petitioners have alternative remedy of filing criminal revision under Chapter 20 of Code of Criminal Procedure. Writ petition under Article 227 of Constitution of India is not maintainable as is held by the apex Court in case of Sadhana Lodh vs. National Insurance Co. Ltd and another, 2003 SCC 524. Their Lordships have held as under:

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct any error apparent on the face of the record, much less of an error of law.……..For the aforesaid reasons, we are of the view that since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Article 226/227 of the Constitution of India and for that reason, the judgment and order under challenge deserves to be set aside."

In view of the fact and circumstances of the case, I am of the view that writ petition under Article 227 is not a remedy against the impugned order, therefore, without entering into the merits of the controversy the writ petition is dismissed on the ground of alternative remedy.

The writ petition is accordingly dismissed.

11.07.2003 **(Rajesh Tandon, J.)**
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